Congress of the United States
House of Representatives
Washington, D.C. 20515

March 11, 2015

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

We write to urge the Department of Justice (DOJ) to take further action to end discriminatory profiling by removing remaining loopholes in the 2014 federal law enforcement profiling guidance.

As leaders of congressional caucuses that represent millions of Americans, we are disappointed with the revised guidance released last year. We appreciate that the new guidelines make it clear that law enforcement discrimination based on religion, national origin, gender, sexual orientation, and gender identity is unacceptable. Unfortunately, significant loopholes persist.[1]

Our nation's law enforcement agencies should unequivocally protect civil rights and liberties. Despite statements that profiling on the basis of protected characteristics is "ineffective," "morally wrong," and "inconsistent with [DOJ's] core values and principles of fairness and justice," the current exemptions in the profiling guidance effectively authorize discrimination in the name of national security, domestic surveillance and border security. Law enforcement will continue to permit bias-based profiling for activities near the "vicinity of the border, or for protective, or screening activities." These exceptions are troubling because border and screening activities are precisely the areas where profiling has been the most pervasive.[2]

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[1] On December 22, 2014, CAPAC submitted a letter to the Department of Homeland Security (DHS) asking that as DHS implements the profiling guidance and develops its own internal policies, it close the gaps in coverage and ensure that bias-based practices are no longer permitted by any DHS entity.

[2] *See, e.g.*, SAALT, et. al., *In Our Own Words: Narratives of South Asian New Yorkers Affected by Racial and Religious Profiling*, March 2012 (available at http://saalt.org/wp-content/uploads/2012/09/In-Our-Own-Words-Narratives-of-South-Asian-New-Yorkers-Affected-by-Racial-and-Religious-Profiling.pdf) (highlighting that South Asians are disproportionately affected by additional TSA screening based on religious attire and that airport officials fail to follow own screening protocols); *see also* The Leadership Conference, *Restoring a National Consensus: The Need to End Racial Profiling in America*, March 2011 (available at http://www.civilrights.org/publications/reports/racial-profiling2011/racial_profiling2011.pdf) (noting that turbaned Sikh travelers consistently report that they are set aside for disparate rates of secondary screening at some TSA checkpoints, even after passing through body scanners without incident).

Beyond the geographic and screening exemptions, the guidance fails to address the Federal Bureau of Investigation's ("FBI") discriminatory mapping program. FBI domestic mapping and surveillance programs target, without reasonable suspicion, minority communities, businesses, and places of worship for extensive data-gathering. This kind of mapping is not good police work; instead of protecting communities, it alienates them. Revised guidance should prohibit this practice and ensure that the guidance is compulsory to local law enforcement agencies that partner with the federal government or receive federal funding.

Although the guidance applies to state and local law enforcement officers who participate in federal law enforcement task forces, we believe that this falls short of protecting most people from discriminatory profiling because the vast majority of state and local law enforcement activity is not conducted as part of a federal law enforcement task force. Accordingly, we urge you to clearly and broadly define the meaning of "federal law enforcement task force" and to ensure that local law enforcement cannot circumvent the guidance. Although the DOJ does not have jurisdiction over state and local law enforcement agencies, the federal government can require recipients of federal assistance to comply with federal standards. Discriminatory profiling is contrary to our core Constitutional principles and federal dollars shouldn't be spent perpetuating law-breaking activity.

We are encouraged that the revised guidance requires law enforcement agencies to begin tracking profiling complaints and to study the implementation of the guidance through targeted, data-driven research projects. In that vein, it is important for the public to know what categories will be used when collecting, inputting, organizing, and disaggregating data. It is equally important that the law enforcement agencies disaggregate data with respect to Asian Americans, Native Hawaiians, and Pacific Islanders, a population that includes over 50 different ethnic groups that speak over 100 different languages, as well as African Americans and Hispanic Americans. Without adequate data disaggregation, it is difficult to ascertain, understand, and ultimately address the unique issues and problems facing specific subgroups within this diverse community.

Lastly, we urge the DOJ to ensure that profiling complaints are prioritized and guaranteed review. Civilian complaints are one of the only ways that the DOJ can hold law enforcement accountable to the Guidance. To accomplish this, we recommend that complaint mechanisms be clear and accessible to community members. As a first step, we suggest identifying an ombudsman that the public can contact directly to ensure that their complaints are received.

We understand that meaningful change takes time and that the DOJ has different policy considerations to reconcile. We look forward to working with you to ensure that the civil liberties of all persons are protected and to bring an end to discriminatory profiling by the government.

Sincerely,

Judy Chu, PhD
Chair, Congressional Asian Pacific American Caucus

G.K. Butterfield
Chair, Congressional Black Caucus

Linda Sánchez
Chair, Congressional Hispanic Caucus

Keith Ellison
Co-Chair, Congressional Progressive Caucus

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Co-Chair, Congressional Progressive Caucus